



AUSTRALIAN MEDICAL  
ASSOCIATION

ABN 37 008 426 793

T | 61 2 6270 5400

F | 61 2 6270 5499

E | [info@ama.com.au](mailto:info@ama.com.au)

W | [www.ama.com.au](http://www.ama.com.au)

42 Macquarie St Barton ACT 2600

PO Box 6090 Kingston ACT 2604

---

## **AMA submission to the Council of Attorneys-General – Age of Criminal Responsibility Working Group Review**

### **The Chair**

**Age of Criminal Responsibility Working Group**

**c/- Strategic Reform Division**

**Department of Justice**

**GPO Box F317**

**PERTH WA 6841**

**[LegPolicy@justice.wa.gov.au](mailto:LegPolicy@justice.wa.gov.au)**

### **Background**

On March 25, 2019 the Australian Medical Association (AMA) publicly called for the age of criminal responsibility to be raised to 14 years of age. The AMA's call followed the passing of a new policy motion at the AMA Federal Council meeting in March.

AMA President, Dr Tony Bartone, stated that raising the age of criminal responsibility will prevent the unnecessary criminalisation of vulnerable children. Dr Bartone said:

“Australia has one of the lowest ages of criminal responsibility in the world. The criminalisation of children in Australia is a nationwide problem that disproportionately impacts Aboriginal and Torres Strait Islander children. Most children in prison come from backgrounds that are disadvantaged. These children often experience violence, abuse, disability, homelessness, and drug or alcohol misuse. Criminalising the behaviour of young and vulnerable children creates a vicious cycle of disadvantage, and forces children to become entrenched in the criminal justice system. Children who are forced into contact with the criminal justice system at a young age are also less likely to complete their education or find employment, and they are more likely to die an early death. The AMA wants the Commonwealth and State and Territory Governments to support developmentally and culturally appropriate health, education, and rehabilitative-based alternatives to the criminal justice system.”

Following the release of the AMA motion, the AMA joined with the Human Rights Law Centre, Law Council of Australia, Amnesty, Change the Record, NATSILS and others to campaign for the age of criminal responsibility to be raised.

In December 2019, the AMA and the Law Council of Australia (LCA) united to issue a Policy Statement on this issue. The policy is attached to this submission and addresses many of the specific questions asked by the Council of Attorneys-General.

The AMA notes that

- around 600 children below the age of 14 are locked away in youth jails each year, with Aboriginal and Torres Strait Islander (ATSI) children constituting 70 per cent of this cohort.
- around 9,000 children below the age of 14 have contact with the broader criminal justice system each year.
- overall, ATSI children constitute around 5 per cent of the youth population, yet close to 60 per cent of children in prisons.

### **Responses to Council of Attorneys General Specific Questions**

*Currently across Australia, the age of criminal responsibility is 10 years of age. Should the age of criminal responsibility be maintained, increased, or increased in certain circumstances only? Please explain the reasons for your view and, if available, provide any supporting evidence.*

The age of criminal responsibility should be raised to 14 years.

The AMA position is that prisons should not be a rite of passage for children. Australia must also come into line with international human rights standards. The AMA supports the view of the United Nations Convention on the Rights of Children that policies designed to incarcerate children are usually a response to public pressure and are not designed with an understanding of how children develop.

The AMA and Law Council of Australia issued a joint Policy Statement in December 2019 (attached). We maintain that juvenile detention disproportionately impacts Aboriginal and Torres Strait Islander (ATSI) children. As our Policy Statement highlights, ATSI young people aged 10–17 are 23 times as likely to be in detention than non-Indigenous young people, skyrocketing to 38 times in some states. In the Northern Territory, at least 94 per cent of detainees in juvenile detention are ATSI. At times, this statistic has been 100 per cent.

The reasons for the high rates of ATSI young people interacting with the criminal justice system are complex and multifaceted. However, cycles of poverty, intergenerational trauma and grief, as well as experiences of systemic injustice that accumulate over a lifetime, are major causal factors.

Practices and policies in the juvenile justice space contribute to the criminalisation of ATSI young people. ATSI young people who commit minor offences often receive harsh sentences, including imprisonment. This often sets young people on a path of future crime and incarceration, while diversion to ATSI community-led programs would be more effective and certainly beneficial for health and wellbeing.

It is important to raise the age of criminal responsibility to 14 because studies have shown that the younger the child is when first having contact with the justice system, the higher the rate of recidivism. Other studies have found that ATSI young people receive limited and inconsistent access to diversionary options, and are more likely to be processed through the courts than non-Indigenous young people. Detention can be particularly harsh for ATSI children, especially when juvenile detention centres are difficult for family and other support networks to access, geographically and logistically.

Certain health issues have been identified as significant drivers of the imprisonment of Aboriginal and Torres Strait Islander young people.

- Current evidence suggests that ATSI people with diagnosed mental health disorders have substantially more contact with the police than their non-Indigenous peers.
- Further, among ATSI prisoners with an intellectual disability, first contact with the criminal justice system occurs earlier than for those without.
- Research indicates a significant number of ATSI young people who end up in detention centres and prisons suffer from previously undiagnosed foetal alcohol spectrum disorder (FASD).
- A recent study in Western Australia's Banksia Hill Detention Centre found the prevalence of FASD among ATSI youth detainees was 47 per cent. It also found nine out of ten incarcerated young people have at least one form of severe neurodevelopmental impairment.

Governments must focus on policies and critical support programs that address the underlying causes of imprisonment and break these cycles, rather than imprisoning children as young as ten.

Early intervention and prevention, rather than criminalisation, is important because it can substantially reduce the risk of secondary medical, social, emotional and behavioural problems, especially in younger children.

*If you consider that the age of criminal responsibility should be increased from 10 years of age, what age do you consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences? Please explain the reasons for your view and, if available, provide any supporting evidence.*

As outlined above, the AMA position is that the age of criminal responsibility should be raised to 14. The AMA does not support 'carve outs' to legislation. For all offences, the age of criminal responsibility should be 14 years.

The AMA supports the medical evidence relating to brain development and the impact of incarceration on young people.

The AMA notes that the United Nations Convention on the Rights of the Child states "Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults." [Committee on the Rights of the Child, General comment No. 24 (2019) on children's rights in the child justice system]

*If the age of criminal responsibility is increased (or increased in certain circumstances) should the presumption of doli incapax (that children aged under 14 years are criminally incapable unless the prosecution proves otherwise) be retained? Does the operation of doli incapax differ across jurisdictions and, if so, how might this affect prosecutions? Could the principle of doli incapax be applied more effectively in practice? Please explain the reasons for your view and, if available, provide any supporting evidence.*

We defer to submissions made by the Human Rights Law Centre and other legal organisations.

*Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised (eg to 12) should a higher minimum age of detention be introduced (eg to 14)? Please explain the reasons for your views and, if available, provide any supporting evidence.*

As outlined above, the AMA position is that the age of criminal responsibility should be raised to 14 with no carve outs or exemptions. No child should be deprived of their liberty unless there are specific and demonstratable public health and/or public safety issues.

*What programs and frameworks (eg social diversion and preventative strategies) may be required if the age of criminal responsibility is raised? What agencies or organisations should be involved in their delivery? Please explain the reasons for your views and, if available, provide any supporting evidence.*

This is not a question the AMA is able to answer. State and Territory Governments have responsibility for funded programs and resources. It is recommended that an expert working group be established to examine the existing and proposed programs and frameworks in each jurisdiction. This working group would, in conjunction with government agencies and departments, examine what programs and strategies are working, where they are working and why they are successful in managing the complex needs of children who may have been involved in criminal activities.

Ideally, this audit should involve the type of service mapping and/or systemic needs assessments being undertaken by some PHNs. This service mapping can be undertaken with regional partners, NGOs and government to provide statistical data and qualitative information needed to identify priority programs, resource deficits and to coordinate social diversion and preventative strategies.

The AMA does not believe that a single organisation or government is able to satisfactorily answer the question on programs and frameworks, which is why we are suggesting a collaborative approach involving government and non-government participants.

*Are there current programs or approaches that you consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future? Do these approaches include mechanisms to ensure that children take responsibility for their actions? Please explain the reasons for your views and, if available, provide any supporting evidence or suggestions in regard to any perceived shortcomings.*

The AMA recommends that Attorneys-General undertake a review of approaches adopted overseas in countries where the age of criminal responsibility is 14 years or older. Scotland, Japan and many European countries do not incarcerate children under the age of 14 years. These nations have in place alternative approaches to support young people, and these should be examined and considered in the Australian context.

*If the age of criminal responsibility is raised, what might be the best practice for protecting the community from anti-social or criminal behaviours committed by children who fall under the minimum age threshold?*

As per our answer above, then age of criminal responsibility is above 10 in many other countries. These jurisdictions have in place policies and practices to manage anti-social and criminal behaviour.

The AMA also notes that the UN Convention on the Rights of the Child [article 40] states that “every child alleged as, accused of or recognized as having infringed criminal law should always be treated in a manner consistent with the promotion of the child’s sense of dignity and worth. Evidence shows that the prevalence of crime committed by children tends to decrease after the adoption of systems in line with these principles.” The Convention makes the important statement in relation to best practice:

“Prevention and early intervention programmes should be focused on support for families, in particular those in vulnerable situations or where violence occurs. Support should be provided to children at risk, particularly children who stop attending school, are excluded or otherwise do not complete their education. Peer group support and a strong involvement of parents are recommended. States parties should also develop community-based services and programmes that respond to the specific needs, problems, concerns and interests of children, and that provide appropriate counselling and guidance to their families.”

[Committee on the Rights of the Child, General comment No. 24 (2019) on children’s rights in the child justice system, pp 4]

The AMA recommends that this question be addressed by convening a working group or committee of experts (such as the Human Rights Law Centre, Law Society of Australia, NATSILS, State and Territory Governments, police and judiciary) to advise on best practice approaches used overseas and within Australia.

**2 FEBRUARY 2020**

### **Contact**

Simon Tatz  
Director  
Public Health  
Ph: (02) 6270 5000  
statz@ama.com.au